

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DARTAVIS SHELTON,

Plaintiff,

v.

ORDER

21-cv-335-wmc

LT. VANGHEEM, HSU NURSE GARLAND,
PETE ERICKSEN and JEAN ZWIER,

Defendants.

In a May 18, 2021, order, the court severed this case from case no. 18-cv-341-wmc. (Dkt. #1.) Rather than require plaintiff to file a new complaint and in light of statute of limitations concerns, the court directed the clerk of court to open this case with plaintiff's original complaint and with the same filing date as that complaint – May 8, 2018. (Dkt. #1 at 2.) Because plaintiff was a “prisoner” under the Prison Litigation Reform Act (PLRA) on that filing date, the court explained that plaintiff would owe the same partial payment of the filing fee in this case as he was assessed in the original case. (Dkt. #1 at 3.)

Plaintiff challenges that conclusion, noting that he was no longer incarcerated when this case was severed, and argues that he cannot afford to pay the same amount. (Dkt. #5 at 2-4.) Even so, this case was opened with his original complaint and with the original 2018 filing date, so the PLRA applies. *Jaros v. Illinois Dep't of Corr.*, 684 F.3d 667, 669 (7th Cir. 2012) (“prisoner” status under the PLRA turns on whether the plaintiff was confined when suit was filed). And in any event, nonprisoner plaintiffs seeking to proceed in forma pauperis may also be assessed an initial partial payment of the filing fee. Finally, as the court also explained in its prior order, plaintiff could submit an application for leave

to proceed in forma pauperis in this case if he did not have the resources to pay the amount he was assessed in the original case. (Dkt. #1 at 3.) Plaintiff has done so. (Dkt. #4.)

Accordingly, plaintiff's motion for relief from the court's May 18, 2021, order (dkt. #5) is DENIED and the court will consider his application for leave to proceed in forma pauperis in this matter.

Entered this 7th day of December, 2021.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge